IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Brijesh Narayan v. The Raj.State Co-operative Bank Ltd., Jaipur & Ors..

S.B.CIVIL WRIT PETITION NO.3163/1997
under Article 226 of the Constitution of India.

Date of Order : 9th August, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.P.Sharma, for the petitioner.
Mr. J.Gehlot, for the respondents.

BY THE COURT :

By this petition for writ the petitioner challenges the award made by Labour Court, Jodhpur on 27.6.1997 in connection with dispute referred to it relating to alleged illegal termination of the petitioner w.e.f. 23.11.1992.

The petitioner raised an industrial dispute before the competent conciliation officer at Jodhpur being aggrieved by his alleged retrenchment from services. The parties to the dispute failed to reach at any agreement during conciliation proceedings, therefore, a failure report was submitted after

considering to which the industrial dispute was referred by appropriate government under a notification dated 11.12.1993 to Labour Court, Jodhpur for its adjudication. The industrial dispute referred to Labour court, Jodhpur by notification referred above is in the following terms:-

> " क्या गोलियथ डिटेक्टीव ऐजेंसीज प्रा. लि सी- 43, महावीर मार्ग, जयपुर श्रमिक श्री ब्रजेश नारायण पुत्र गिरधरनारायण माथुर 15/179 चौपासनी हाऊसिंग बोर्ड, जोधपुर के नियोजक हैं? यदि नहीं तो श्री ब्रजेश नारायण पुत्र गिरधरनारायण को प्रबन्धक संचालक, राज. स्टेट कॉपरेटिव बैंक लि. पो. बॉक्स 86, नेहरू बाजार, जयपुर एवं शाखा प्रबन्धक, राज. स्टेट कॉपरेटिव बैंक लि. सिंधी कॉलोनी, सरदारपुरा शाखा, जोधपुर द्वारा सेवामुक्त करना उचित एवं वैध है? यदि नहीं तो श्रमिक किस राहत को पाने का अधिकारी है?"

On reference of the dispute to Labour Court, Jodhpur a claim petition was filed by the petitioner before learned Labour Court. According to the averments contained in the statement of claim the petitioner was employed with the Rajasthan State Co-operative Bank Ltd. (hereinafter referred to as “the Bank”) being sponsored by contractor, the Goliath Detectives (P) Ltd., Jaipur w.e.f. 5.6.1991. The services of the petitioner were discontinued by the Bank on 23.11.1992 without assigning any reason. The petitioner alleged that his termination from service w.e.f. 23.11.1992 is retrenchment as defined under Section 2(oo) of the Industrial Disputes Act, 1947

(hereinafter referred to as “the Act of 1947”) and the same was effected without adhering mandatory condition precedent for retrenchment as prescribed under Section 25(f) of the Act of 1947, as such the same is void ab initio.

On behalf of the Bank a written was filed mentioning therein that the petitioner's services were utilised by the Bank as a consequence of a contract for providing labour with the Goliath Detectives (P) Ltd., Jaipur. The petitioner was never in employment of the Bank but his services were utilised by the Bank through contractor and the wages were also paid by the contractor, therefore, no relationship of master and servant existed between the Bank and the petitioner.

No one put in appearance before the Labour Court on behalf of the Goliath Detectives (P) Ltd., Jaipur.

The Labour Court by award impugned dated 27.6.1997 answered the reference holding therein that no relief could be claimed by the petitioner from the Bank as the petitioner was in employment of the Goliath Detectives (P) Ltd., Jaipur and the services of the petitioner were utilised by the Bank merely in execution of a contract between the Bank and Goliath Detectives. Being aggrieved by the same present writ petition is preferred by the petitioner.

No reply to the writ petition has been filed on behalf of the respondents and nobody has put in appearance on behalf of respondent No.3 the Goliath Detectives (P) Ltd., Jaipur.

The Labour Court by award impugned held that the services of the petitioner were utilised by the Bank as a consequence of a contract arrived at between the Bank and the Goliath Detectives (P) Ltd., Jaipur. By force of said contract the Goliath Detectives (P) Ltd., Jaipur supplied the petitioner as a labour to the respondent Bank. Accordingly the petitioner was in employment of the Goliath Detectives (P) Ltd., Jaipur and not of the respondent Bank. The Labour Court while holding as above ignored the definition of workman as provided under Section 2(s) of the Act of 1947 (Rajasthan Amendment) which reads as under:-

> " "Workman" means any person including an apprentice employed <u>in any industry by an employer or by a contractor in relation to the execution of his contract with such employer</u> to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a

> consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--
>
> (i)who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
>
> (ii)who is employed in the police service or as an officer or other employee of a prison; or
>
> (iii)who is employed mainly in a managerial or administrative capacity; or
>
> (iv)who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercise, either by the nature of the duties atached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."
>
> (The portion underlined is inserted with main provision by Rajasthan Act 34 of 1958, sec.3, w.e.f. 1.7.1960)

From reading of definition of "workman" as provided under Section 2(s) of the Act of 1947 as amended by Rajasthan Amendment Act No.34 of 1958 include any person employed in any industry by an employer or by a contractor in relation to execution of his contract with such employer. The petitioner was employed with the Bank by a contractor in relation to

execution of a contract. In view of it the petitioner is certainly included within the ambit of “workman” of the respondent Bank. The finding given by the Labour Court, therefore, is not valid in light of definition of “workman” as applicable in State of Rajasthan. The award impugned, therefore, deserves to be quashed.

The writ petition, therefore, is allowed. The award impugned dated 27.6.1997 passed by Labour Court, Jodhpur is hereby quashed with a direction to Labour Court, Jodhpur to decide the dispute referred to it under notification dated 11.12.1993 afresh by treating the petitioner as a workman employed with the Rajasthan State Co-operative Bank Ltd., Jodhpur. The Labour Court is further directed to decide the dispute referred to it within a period of six months from today. The parties are directed to remain present before the Labour Court on 5.9.2005 for further proceedings in the matter.

A certified copy of this order be sent to the Labour Court, Jodhpur forthwith.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.